

Problem Solving and Due Process Procedures

Internal Policy Memorandum

Purpose

For Classified Employees:

- To provide a process to discuss and resolve issues in the workplace.
- To provide due process for disciplinary dismissals, suspensions, demotions, and involuntary transfers.

Please carefully review these procedures. Any question regarding these procedures may be answered by your supervisor or the _____ employee relations specialist.

(Refer to DHR Rule 200)

Problem Solving Procedure

Classified employees with permanent, provisional, or entrance probationary status are eligible to use a formal conflict resolution process called Problem Solving. This procedure is for any job-related matter except the following: (1) compensation, except as it applies to alleged inequities within a particular agency or department; (2) termination during the entrance probationary period; (3) items set forth in IC 67-5315(2) (dismissals, demotions, and suspensions); and (4) involuntary transfers.

In general, this procedure requires an employee to meet with his or her immediate supervisor to resolve the matter(s), file for problem solving, meet with _____ representatives appropriate to resolving the issue, and receive a final decision from the Administrator.

GENERAL INFORMATION:

Sexual Harassment and other Illegal Discrimination

Complaints alleging sexual harassment or other illegal discrimination based on race, sex, national origin, age, or disability may be filed using the problem solving procedure, but should be filed in accordance with the procedures outlined in the Policy and Procedures Section.

Time Frames

An employee should file for Problem Solving in writing no later than ten (10) working days after being notified of an action, becoming aware of the issue or problem, or when discussions with the immediate supervisor to resolve the issue have reached an impasse.

The time limit for filing for Problem Solving does not include days the employee is away from work due to illness or other approved leave. The ten (10) working day calculation does not include the day on which the problem occurred, but does include administrative leave.

If an employee does not meet the time limits specified in the Problem Solving procedure for requesting the next level of review (two days), the matter may be considered resolved or dropped. Time elements or intermediate steps for this procedure may be waived upon mutual agreement of the employee and administrator. It is usually in the best interests of our agency for conflicts to be discussed and resolved, regardless of time frame limitations.

Waiver of Intermediate Steps and Time Period

The intermediate steps of the Problem Solving procedure or the time frames may be waived upon mutual agreement of the employee and the supervisor or Level One official. Internal time periods of the procedure may be extended when the employee, immediate supervisor, management representative or administrator is not available due to illness or other approved leave, but in no case longer than ten (10) working days after their return unless expressly agreed upon by both parties.

Time limits specified for requesting the next level of review cannot be extended except when the employee is absent from work due to illness or approved leave. The employee must request the next level of review on the first day the employee returns to work or the matter will be considered resolved or dropped.

Leave Issues

The employee and other staff involved, upon approval of their respective immediate supervisors, will be allowed regular work time for problem resolution discussions.

Optional Mediation Step

Mediation is an optional method of dispute resolution. It may be requested at any time by the employee or by others involved in the problem solving process.

The _____ and employee may mutually agree to engage in mediation during the problem solving or Due Process Procedures. Mediation is not possible unless both the agency and employee agree. If mediation is pursued, and the process agreed to by both parties, the first session is usually held within five (5) working days of the agreement. All other time limits in the Problem Solving Procedure are placed on hold during mediation. The _____ and employee must also agree upon a mediator. Employee representatives are not allowed in the mediation process.

If mediation is not successful in the resolution of an issue, the employee must request to continue problem solving within five (5) days of the conclusion of the mediation or the matter is considered resolved.

Prohibitions

No employee shall be disciplined or otherwise prejudiced in his or her employment for exercising his or her rights under the problem solving procedure. No supervisor or any other official of the _____ may retaliate against an employee for:

- filing under this problem solving procedure;
- participating as a witness or an employee representative; or
- assisting another employee in preparing a filing.

Representation

An employee has the right to be represented by anyone he or she chooses at each step of the procedure, except for the initial discussion with the immediate supervisor. Employees are responsible for notifying representatives of the time and place for meetings. The schedule limitations of the employee's representative shall not unreasonably delay the process. The employee is responsible for compensating a representative and for paying the representative's expenses.

Problem Solving Procedure Steps

Step 1: Meeting with Immediate Supervisor

Before actually filing for problem solving, an eligible employee must first make a reasonable attempt

to meet with and resolve the matter(s) with his or her immediate supervisor. Representatives are not permitted at the informal meeting with the immediate supervisor.

Employees and supervisors are strongly encouraged to engage in this informal problem solving meeting in order to identify the precise matter(s) at issue, discuss ways to resolve the matter(s), and hopefully resolve the matter(s) at the lowest possible level, consistent with the intent of the Problem Solving Procedure.

Step 2: Filing for Problem Solving

Eligible employees are required to file for problem solving in writing no later than ten (10) working days after being notified of or becoming aware of any matter which may be handled through the Problem Solving Procedure. If the filing alleges an ongoing pattern of harassment or illegal discrimination, it shall be considered timely if filed within ten (10) working days after the last allegedly offensive action. The time limit for filing shall be extended due to the employee's illness or other approved leave, up to ten (10) days after returning to the job. Problem Solving Request forms are available from and must be filed with the employee's supervisor.

Step 3: Meeting with Management Representative

The employee will meet with the appropriate higher level management representative no later than five (5) working days after filing for problem solving. The management representative will consult with the employee's immediate supervisor to determine who may be best able to resolve the problem in this meeting with the employee. The management representative will also take into account the employee's preference in deciding who should be present. Since the goal of this procedure is to resolve problems at the lowest level possible, this meeting may involve the immediate supervisor and any additional people who may be helpful in resolving the issue(s).

Step 4: Final Decision from Administrator

The Administrator or designee may consult with the employee, immediate supervisor and management representative and any others who participated in the problem solving procedure in order to determine how best to resolve the issue(s). The employee will receive a final decision from the Administrator or designee no later than five (5) working days after meeting with the management representative. The problem solving procedure ends with the decision of the Administrator or designee. Problem solving decisions are not generally appealable to the Idaho Personnel Commission.

Due Process Procedure

General Overview

All state employees who are classified and have attained permanent status (satisfactory completion of the probationary period) are entitled to due process before the _____ makes any decision to dismiss, demote, suspend, or involuntarily transfer an employee. Due process requires the _____ to provide the employee with notice and an opportunity to be heard before such a decision is made.

Step 1: Notice

When the _____ provides notice to a permanent classified employee, the notice will contain the following information:

- a. Notice of the Contemplated Action. The _____ will provide the employee with notice of the contemplated action(s). For example, the notice may state that dismissal is the

contemplated action. It may also set forth alternative forms of discipline, such as demotion or suspension.

b. Notice of the Basis for the Contemplated Action. The _____ will provide the basis or reasons for the contemplated action. The “basis” of the contemplated action is the for-cause reason and corresponding legal citation which supports the action against a permanent classified employee. The “for cause” reasons are listed in IC 67-5309(n) and in DHR Rule 190.01.

c. Explanation of the Evidence. The _____ will provide an explanation of the information or evidence pertinent to the contemplated action. This could include an explanation of statements made by other employees, an explanation of documents, and/or an explanation of events leading to the notice.

d. Set a Time to Respond. The _____ will set a time period within which the employee may respond, but in no event may that time period exceed ten (10) working days after the employee has received notice unless both the _____ and the employee agree otherwise in writing. For example, the notice might include, “You have an opportunity to respond no later than five (5) working days after the date of this notice.”

The Notice of Contemplated Action will be sent or delivered to the employee. _____ will not maintain the notice in the employee’s service record. It will be placed in a file reserved for such notices and not made public. The final decision information will be placed in the employee’s personnel file.

Step 2: Opportunity to Respond

A permanent classified employee who receives a notice of contemplated action is entitled to an opportunity to respond in person or in writing. The opportunity to respond is the employee’s opportunity to respond to the notice and present his or her reason(s) why the contemplated action should not be taken. The employee may accept the opportunity and respond within the time period, may reject the opportunity by failing to respond within the time period, or may waive the opportunity.

Time to Respond: The Notice of Contemplated Action will contain a set time period selected by the _____ within which an employee may respond. The _____ will make the final decision after the employee has responded, failed to respond, or otherwise waived the opportunity to respond in writing.

Right to Representation: The law provides an employee with the right to be represented by a person of his or her choosing during the opportunity to respond.

Step 3: _____ Decision

The _____ will notify the employee of its decision no later than ten (10) working days after the employee has responded, failed to respond, or otherwise waived his or her right to respond in writing. If a disciplinary sanction is imposed, the employee may have the right to appeal the agency’s decision to the Idaho Personnel Commission within thirty-five (35) calendar days. Any such appeal does not stay the action. The _____ final decision will be sent or delivered to the employee. The Due Process Procedure ends when the Administrator notifies the employee of the decision.